Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

COMMENTS OF VERIZON

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COMMENTS OF VERIZON[1]

The Commission originally adopted a revenue-based method for universal service assessment because it "is competitively neutral and easy to administer" and "ensure[s] that all

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1 This filing is made on behalf of the Verizon telephone companies and affiliated long distance companies (collectively, "Verizon"). The Verizon telephone companies are the affiliated local telephone companies of Verizon Communications Corp. These companies are listed in Attachment A. The Verizon affiliated long distance companies participating in this filing are Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance, NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions, and Verizon Select Services Inc.

providers of similar services make the same contributions to universal service."[2] By contrast, the proposal to move to an entirely new regulatory regime that relies upon per-connection charges is neither neutral, easy to administer, nor equally applied to providers of similar services. As proposed, it also would be contrary to the express terms of the Act under current conditions in the market.

Introduction and Summary

The current interstate revenue-based contribution system works well, and concerns with the system can be addressed by moving to a collect and remit system, basing carriers' contributions on current revenues, and placing a flexibly defined cap on the amount carriers can impose for universal service fund (USF) charges. These changes will reduce any need for mark-ups that some carriers currently place on USF charges, and caps such charges to ensure that they are reasonable. Although the Commission has stated concern with the potential decline in interstate revenues, it is unclear whether there is any significant, systematic "decline," much less a "trend" in declining revenues. And even if interstate revenues are declining, the way to address that problem is for the Commission to explore ways to limit the fund and to increase contributions from other sources. For example, *all* broadband providers (including cable modem, satellite, and fixed wireless) should be required to contribute to the schools and libraries portion of the fund (just as they already can provide services subsidized by that fund), in order to increase the contributor base and ensure competitive neutrality among providers of advanced services.

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2 *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 ¶¶ 39-40 (1997) ("First Universal Service Order").

The proposed switch to a per-connection charge should be rejected, as it would create new administrative difficulties and would undermine principles of parity and competitive neutrality among different technologies and services. As an initial matter, the Commission would have to address questions about what constitutes a "connection," which is difficult to define, especially for multi-line business connections and newer technologies. No matter how the definitions are set (for example, by bandwidth or with separate tiers of bandwidth, as the NPRM proposes for multi-line businesses), they would inevitably be arbitrary, and would impose disproportionate regulatory burdens on different types of products and services. In addition, the administrative burden on carriers would grow, as carriers would be forced to revamp their systems to focus not on counting dollars (something companies typically already track) but on "connections," however defined.

Rather than fixing problems with an allegedly dwindling funding base, the per-connection proposal appears to virtually eliminate contributions from carriers with the most interstate revenues by shifting almost all costs from long distance carriers to LECs and wireless providers. Changing the assessment to a per-connection method may do some burden shifting among carriers, but the same pool of customers ultimately must pay the same bill. Moreover, under current market conditions, the proposed per-connection charge would be invalid under the express terms of the Act. The Sprint proposal is preferable to the per-connection charge in that it provides for continued contributions from the long distance carriers, but is not better (and in many respects is worse) than an updated revenue-based system.

The Commission should not trade in a revenue-based system that is fairly distributed and relatively easy to administer, for a different, more complex system that would impose inequitable charges, challenging administrative burdens, and, at least under current conditions, would be contrary to the Act.

I. Any Concerns With a Revenue-Based System Easily Can Be Addressed By Using A Collect and Remit Process Based on Current Revenues, and Setting A Flexibly Defined Cap on USF Line Item Charges

A. The Commission Should Maintain a Revenue-Based System, But Move to a Collect and Remit Process Based on Current Revenues

The most significant concerns that the Commission raises with the current revenue-based system all can be addressed through simple adjustments to the system, without a major overhaul of the method of assessment. A revenue-based system is still the best method of collecting funds for universal service because it is a market-based, "self-weighting" approach. That is, under the revenue-based system, the amount a carrier (and that carrier's customers) contributes to universal service is proportional to the amount of revenues attributable to interstate services. A revenue-based system is neutral and maintains parity between competing technologies and services, by allowing assessment differences to be set by the market, rather than by regulators.[3] Thus, unlike the per-connection proposal being considered by the Commission, the interstate revenue-based approach allows for "[e]very telecommunications carrier" providing interstate telecommunications service to contribute on an "equitable" and "nondiscriminatory" basis. *See* 47 U.S.C. § 254(d).

One of the major concerns the Commission has raised with the current system is that universal service line item charges "often significantly exceed the amount of the contribution factor." NPRM ¶ 18. Some of the mark-ups to USF charges are made by carriers reportedly

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[3] This is because the market sets the prices for products and services, and the universal service contribution amount charged is based upon a percentage of the market-driven rates.

because of the lag time between assessment and payment. According to those carriers, declining revenues, when combined with an assessment system based on historical revenues, requires the carrier to charge a larger percentage in order to recover the needed amounts from a smaller base. NPRM ¶18 & n. 44. In addition, carriers claim that the mark-ups often are due to the inability to collect from certain customers, which requires carriers to make up the shortfalls from other customers. NPRM ¶ 101.

Both of these reported causes of mark-ups to the USF line item charge – a mismatch due to declining revenues for a historical assessment system, and the shortfalls due to uncollected revenues – can be addressed by moving to a collect and remit system, and basing contributions on current revenues. Under such a system, USAC would set the quarterly contribution level based on projected needs (and projections of collected revenues), and would require carriers to remit payment based upon that percentage as applied to revenues actually collected from all customers. This would solve the problem of mark-ups designed to offset uncollectible USF contributions, because individual carriers would not be responsible for making up shortfalls in collections. Basing the percentage factor on projected revenues, and requiring carriers to collect that percentage only from actual collected revenues, eliminates the problem of having a lag time between assessment and collection, which can penalize carriers with declining revenues. If the revenues actually collected are less (or more) than projected, USAC could base the next quarter's assessment rate at a percentage designed to "true up" the numbers.[4]

[4] USAC has a significant reserve of funds in schools and libraries program that it could "borrow" against to make up any temporary shortfalls between quarters. Alternatively, if the Commission did not want to allow such "borrowing," it could set up a reserve.

Another concern the Commission has raised is whether, if there is a continued "trend" in declining interstate revenues, there might be a shortfall in the universal service fund. NPRM, ¶ 7. As an initial matter, it is not clear whether there has been a consistent decline in interstate revenues, and whether any such "trend" (if it in fact exists) will continue in the future. Interstate revenues have fluctuated, and there simply is not enough data at this time to determine whether any decreases in interstate revenues are temporary shifts due to seasonal and economic changes, or are part of a longer-term "trend."[5]

Even if it could be established that there existed a general trend toward declining interstate revenues, any declines are not at such a level as would warrant a major overhaul of the entire universal service assessment system. If, in the future, the Commission determines that traditional sources of interstate revenues will decline on a continued basis, there are various ways the Commission can address that problem within the framework of a revenue-based system. For example, if interstate revenues have been declining due to intermodal substitution for traditional wireline services, it might be appropriate for the Commission to examine whether to have the providers of those intermodal services contribute to the universal service fund. One change the Commission can implement immediately is to require *all* providers of broadband services – including cable modem, fixed wireless, and satellite providers – to contribute to the schools and libraries fund. Today, the providers of DSL contribute to the universal service fund based on broadband revenues, but broadband providers who use competing technologies do not. *See* section V, *infra*.

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[5] *See In Support of the Current USF Contribution, October 2001*, attached to October 17, 2001 letter from W. Scott Randolph, Verizon, to Magalie R. Salas, at 7 ("Verizon Ex Parte").

And importantly, any problems caused by a potential decline in interstate revenues are not solved by the per-connection proposal. The proposed per-connection charge does not change the ultimate source of the funding base (consumers), but only shifts the burden from the long distance providers (who collect the bulk of interstate revenues) to a smaller group of contributors (LECs, wireless providers, and their customers), with a smaller interstate revenue base to draw upon. It is a strange "solution" to address the problem of an allegedly shrinking interstate pie by eliminating large slices of the pie.

The Commission also has expressed some concern about bundled services, which often have "blurred the distinctions between interstate/intrastate and telecommunications/ non-telecommunications revenues on which the current contribution system is based." NPRM ¶ 12. However, these "blurred" distinctions caused by new, bundled services, such as the cable modem services widely offered by cable operators, are not unique to the revenue-based system.[6] In addition, while creative marketing strategies may have blurred distinctions, they do not make them impossible. The Commission can easily set a default rate, based on an allocator formula, for such blended services. Or it could set safe harbor amounts for certain types of services. Carriers who wanted to be assessed amounts different from those set by the default or safe harbor formula could be required to provide data to specifically support assessment at a different rate.

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[6] As stated in section II.A, *infra*, a per-connection approach has its own problems with new and bundled services.

B. The Commission Should Ensure That Any Assessment System Allows For Flexibility in Carrier Billing, and Should Not Require USF Charges To Be "Uniform" or Calculated on an Individual Per Customer Basis

If the Commission is concerned about the possibility of carriers imposing higher universal service charges on one class of customers than others, it can remedy the situation by setting a *maximum* average safe harbor amount that can be charged as a line item on a bill to any *class* of customers. *See* NPRM ¶ 99.[7] Such a cap should be enough to cover not only the amount USAC requires, but also carriers' administrative expenses associated with the fund. The mark-up can be a standard percentage (such as 1% to 3% of the amount collected, as discussed below), or based on some other formula that would give carriers flexibility in how to charge universal fund contributions.

Any cap, however, must be defined in such a way as to allow carriers flexibility in billing customers for universal service assessments. In order to ensure flexibility, the Commission should not set any cap on a *per individual customer* basis, but should instead set it on an average, based on a wider (*per class of customer*) basis. The Commission could set the definitions of classes of customers on a broad basis (residential, business, etc.), or allow carriers to set definitions. The problem with a uniform, *per individual customer* requirement may occur with carriers who wish to set universal service charge rates on a flat fee basis, based on average charges over a period of time, rather than calculating the universal service charge on an individual bill-by-bill basis. For such carriers, a rule that required them to make each charge no

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[7] In order to avoid potential First Amendment problems, the Commission could allow carriers to decide how to label any USF charges on a customer's bill, but require that any charge intended to recover USF assessments (however labeled) could not exceed the cap. *See generally* NPRM ¶¶ 104-08.

more than a maximum percent, on an individual customer-by-customer basis, could be administratively difficult.[8]

If the Commission instead were to set the rate at a uniform line item amount (based on a flat rate or a percentage), rather than a maximum safe harbor amount, other problems would arise. For example, a uniform mark-up requirement would require carriers to average *all* universal service charges on a nationwide basis, which could increase administrative burdens and reduce flexibility in the way universal service charges are made. It is also unclear how the Commission would calculate whether any rate (per-line or percentage based) is "uniform" for *each* customer when applied to new technologies, bundled packages, and other billing methods that do not align strictly along the interstate revenue lines. A uniform mark-up requirement would not give carriers flexibility in how and whether they recover universal service costs from consumers. For example, a uniform charge (flat or percent) applied to all customers would not give carriers flexibility to absorb the universal service charge, rather than passing it on to customers.

Unlike a "uniform" mark-up requirement, a flexibly defined maximum safe harbor *cap* would allow carriers flexibility on pricing and bundling new services. Any safe harbor cap, however, should be sufficient to allow carriers to recover their administrative expenses. The Commission could allow carriers to increase the recommended USAC percentage by a set amount, such as 1% to 3% of the amounts collected, which is the standard mark-up states

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[8] For example, if a carrier determines that an average flat fee of $.50 per customer will collect the right amount of universal service contributions, it should be able to charge all similar customers that average rate. Under a strict *per individual customer* cap, however, it would have to adjust that charge for every customer, based on each customer's interstate revenues (*e.g.*, customers with lower-than-average interstate revenues might pay $.45, and those with higher-than-average interstate revenues might pay $.55).

typically allow for administrative costs related to regulatory fees.[9] Or recovery of carriers' administrative expenses can be based on a formula the Commission determines to be appropriate, based on input from carriers regarding their costs. The Commission also should allow carriers with detariffed services the option of filing a tariff for the USF charges associated with those services, as that would allow the carriers to apply those charges promptly, and would decrease the administrative burdens (and thus the costs) associated with the assessment.[10]

By eliminating the problems associated with lag times and uncollectibles, the Commission ensures that carriers generally will not need to make larger mark-ups than those necessary to cover administrative costs. Carriers who want to mark up the USF line item charge more than the standard amount would be able to do so only after getting Commission approval, based on specific data to support the additional mark-up. Because there would be a cap on the amount that can be charged as a USF line item charge, there would be a strong incentive for carriers to recover universal service contributions from all categories of customers (such as dial-around customers or prepaid card service customers), since carriers would not be able to recover these charges through increased line item charges to other customers.

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[9] *See, e.g.*, 50 Ill. Code § 750/15.3 (carrier may retain 3% for administrative costs related to emergency local 911 surcharge); 35 Ill. Code § 635/25 (carrier may retain up to 2% of amount collected "in order to cover expenses incurred in collecting, accounting for and remitting" infrastructure maintenance fee); Va. Code § 58.1-3813.1 (carrier may retain 3% of fee collected for administrative costs related to enhanced 911 charges); 35 Pa. Stat. § 7017 (supplier may retain 2% of gross receipts from E-911 collection to cover administrative costs).

[10] The Commission's general concerns about the potential competitive impact of tariffs would not apply to a universal service charge that is based on a regulatory mandate. *See generally 2000 Biennial Regulatory Review, Policy and Rules Concerning the International, Interexchange Marketplace*, Report and Order, 16 FCC Rcd 10647, ¶¶ 22-24 (2001).

II. The Commission Should Not Impose a Mandatory Per-Connection Surcharge, As it Would Hamper Carriers' Flexibility, and Would Create More Problems Than it Would Solve

The NPRM seeks comment on whether universal service fund contributions should be changed from a revenue-based system to one that looks at "the number and capacity of the connections [the contributor] provides to a public network." NPRM ¶ 16. The answer to that question is an emphatic no. Despite the IXCs' claim that this system would be simple to administer, switching to a connection-based system would impose significant administrative burdens and create more problems than it solves. One of the main problems is that there is no way to ensure that any definitions of "connection," which by their nature will be arbitrary, will ensure that complex products and services, and new technologies, will be treated with parity and in a way that is competitively neutral. In addition, such a system would practically eliminate any support from the largest contributors to the current funding base (those with the largest interstate revenues), and, as proposed, would be contrary to the terms of the Act under current conditions.

A. The Per-Connection Proposal Would Cause More Problems Than it Would Solve

When the Commission initially set up the universal service contribution system, it wisely decided against imposing a "mandatory end-user surcharge" for universal service contribution, agreeing with the Joint Board that such a system "would dictate how carriers recover their contribution obligations and violate Congress's mandate."[11] Although the Commission theorizes that the connection-based system may make it easier to apply to bundled services, the fact is that

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11 *See* NPRM ¶ 23, citing *Universal Service Order*, 12 FCC Rcd 8776, 9210-11, ¶ 853 (1997).

it will be difficult to administer, inherently arbitrary, not competitively neutral among different products, services, and technologies, and, as proposed, would violate the Act.

An initial problem with the "per-connection" method is trying to find a workable definition of "connection." *See* NPRM ¶ 41. The Commission has proposed a standard that sets separate "tiers" of bandwidth, based on threshold determinations (such as maximum capacity bandwidth for multi-line business connections). While that approach is better than many alternatives,[12] it still would likely lead to skewed results in the market, as providers and consumers game the system in order to pick technologies that will offer maximum bandwidth for minimum assessments.[13] For that reason, if the Commission goes forward with the per-connection proposal, it should treat Centrex lines using the same maximum nine-to-one trunk equivalency ratio the Commission found appropriate to use for PICC assessments, in order to avoid distorting the market for Centrex.[14] But regardless of how it is structured, the proposal to

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[12] If each multi-line business connection were treated as equal to one single-line "connection," rather than on a capacity basis, residential customers would pay the same rate as multi-line business connections for significantly less bandwidth. *See* NPRM ¶ 50. If an assessment level were established based on a uniform unit of capacity basis for both business and residential customers, high capacity broadband connections would pay an enormous amount.

[13] The NPRM proposes that there be three tiers of multi-line business connections, defined by maximum available bandwidth (rather than actual usage). Tier 1 would be defined as connections providing less than 1.544 MegaBits Per Second (Mbps), Tier 2 between 1.544 Mbps and less than 45 Mbps, and Tier 3 connections those that provide 45 Mbps and higher. NPRM ¶ 52. The Commission proposes that each tier be assessed at a base rate, so that, for example, Tier 2 connections would be assessed at five times the Tier 1 rate, and Tier 3 connections at forty times the Tier 1 rate. *Id.* Under such a scenario, market-based decisions may be skewed by regulatory rates. For example, some businesses may order maximum Tier 1 or Tier 2 services, rather than jumping to Tier 3 services that would have a much higher universal service assessment.

[14] *See* 47 C.F.R. § 69.153(e); *see also Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure, Second Order on Reconsideration and Memorandum Opinion and Order*, 12 FCC Rcd 16606, ¶ 31 (1997).

treat multi-line business connections differently from single-line connections based on "equivalency ratios" causes serious administrative problems and raises major questions about parity and competitive neutrality between competing products and services. Indeed, the Commission rejected a per-line approach for precisely these reasons, previously *finding* that calculations that required an equivalency ratio approach – such as that proposed for multi-line businesses – were "not competitively neutral."[15]

However, other proposed approaches to the multi-line business connections are no better than a tiered equivalency approach, and may be much worse. For example, requiring the contribution to be assigned based on each level of capacity (rather than a tiered approach) would be incredibly burdensome, as carriers would be required to "provide detailed information regarding each level of capacity purchased by its customers," and presumably USAC would have to monitor this data. *See* NPRM ¶ 54.

And any problems with defining what constitutes a "connection," and how much non-traditional "connection" equivalents should be assessed, would only be exacerbated by future technological and market changes. Thus, the Commission would have to wrestle with these difficult definitional issues not just at the outset of the process, but on a repeated basis, as new services and products arise. Rather than inviting comment on the proper size and use of the universal service fund, the Commission will be bombarded with requests to change how each

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[15] "We do not adopt commenters' suggestions that contributions be calculated entirely on non-revenues-based measures, such as per-minute or per-line basis at this time. We affirm the Joint Board's recommendation that such mechanisms would require the Commission to adopt and administer difficult 'equivalency ratios' for calculating the contributions of carriers that do not offer services on a per-line or per-minute basis. . . . [W]e find that these approaches are not competitively neutral because they may inadvertently favor certain services or providers over others if the 'equivalency ratios' are improperly calculated or inaccurate." First Universal Service Order, ¶ 852.

type of "connection" is assessed. One definitional change, one shift in defining tiers, easily could translate to millions of dollars in differences to customers or carriers. It could doom certain services and products, or give others an unfair leg up on the competition. In short, it could lead to a situation where regulators, rather than market forces, set the winners and losers in complex products and services.

Moreover, there is an inherent problem with the Commission's proposal to treat single-line connections differently from multi-line business connections. As the Commission recognizes, if the multi-line business connections are based on the "residual" portion of the universal service fund, they are subject to greater variability than single-line connections. NPRM ¶ 51. Thus, if the residual amount is small, the multi-line businesses will pay less than single-line customers. If the residual grows substantially in coming years, which may occur if the Commission accepts some of the many requests to increase the size of the universal service fund,[16] the Commission will have to either raise the per-connection charge for single line users, or force multi-line businesses to shoulder larger and larger portions of the fund. Again, because the Commission will presumably have the discretion to adjust the "base" single-line per-connection charge and thus, by necessity, the "residual" charge to multi-line business connections, the Commission would be under constant competing political pressures. On the one side will be those who argue that the single-line per-connection charge should be lowered (to help the residential consumer); on the other will be those who argue it must be increased (to

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[16] *See, e.g.*, *MAG Plan for Regulation of Interstate Services of Non-Price Cap ILECs and IXCs*, 16 FCC Rcd 19613, ¶ 9 (2001); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, NPRM and Order, FCC 02-41, ¶¶ 16-17 (rel. Feb. 15, 2002); *Maine PUC and Vermont PSC Petition for Reconsideration*, CC Docket No. 96-45 (filed Feb. 22, 2002); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, NPRM, FCC 02-122 (rel. April 19, 2002).

avoid overburdening business consumers). These types of subsidy debates were supposed to have been eliminated as a result of the passage of the universal service provisions of the Act.[17]

Even within the business community, the "per-connection" charges will be inherently arbitrary, rather than proportional to the value of the products and services offered. As the Commission has recognized, it simply does "not have sufficient data on universal service fees paid by the average multi-line business customer to determine the impact that a connection-based assessment approach would have on such customers." NPRM ¶ 57. Verizon cannot calculate the impact for most multi-line business connections, because such connections usually are customized on a customer-by-customer basis, and thus there is no meaningful "average" current universal service assessment. Undoubtedly, if the Commission were to move to a per-connection charge, some customers would pay dramatically more, some dramatically less, and some about the same in universal service assessments as they do today. The Commission should not go forward with a per-connection proposal without first studying the potential impact such a change would have on these multi-line business customers.

For the simplest multi-line business services, rough approximations of current assessments can be made. Using 2002 figures and the NPRM's assumptions for the base rates for Tier 1, Tier 2, and Tier 3 charges, Verizon estimates that under the proposed per-connection assessment, the per line connection charge per month for Tier 1 lines will be $8.30, for Tier 2

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[17] As Verizon has stated in earlier presentations to the Commission, a per-line or per-connection method is likely to have the most detrimental impact on customers with lower long-distance usage, who under the current system pay less for universal service than high-volume long distance users because they use fewer interstate services. A system that imposed a flat, per-connection charge, would dramatically increase the charges to these low-volume users. *See* Verizon Ex Parte; *see also* November 16, 2001 letter from Martin A. Corry, AARP, to Michael K. Powell.

$41.50, and for Tier 3 $332.[18] It appears that for some of these services, the assessments will be approximately the same as amounts typically contributed today, but for others, the rates will vary considerably from typical current assessments. For example, PBX trunks and ISDN BRI services today pay, on average, a USF assessment between $.55 and $.60 per month; the new proposed per-connection charges (which would assign these as Tier 1 services) thus would be *more than thirteen times greater* than the current assessment for those services. Centrex, another Tier 1 service, contributes on average about 6 to 7 cents per line per month. Using a maximum nine to one trunk equivalency ratio, the assessment likewise would increase dramatically, jumping to $.92 per line ($8.30 divided by 9), which also is *more than thirteen times greater* than the current assessment. For Tier 2 services such as an interstate DS1 special access circuit, the typical contribution today is about $35.00 per month; it would become $41.50 (about 19% more) under the per-connection method. As stated above, for many other multi-line business services, it is difficult to reach an "average" rate, and thus difficult to know the impact a per-connection charge will have.

And even if current average rates paid by multi-line business customers could be determined, the future impact of a per-connection charge on these customers will be largely unknown, because of the "residual" nature of their assessment. That is, if the single-line rate stays the same, multi-line business customers will be forced to take on increasingly higher universal service assessments as the fund experiences shortfalls, or if there are increases in the

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18 The estimate uses the residence and business line counts used in the Verizon Ex Parte model, as updated by more recent projections. The estimate for special access lines is based on the number of 2001 lines reported on ARMIS 43-08, plus 10% (an estimate to capture providers who do not report via ARMIS), and a projected growth rate. For purposes of this analysis, Verizon has assumed Centrex and PBX services will be assessed on a trunk equivalency basis.

fund size. For example, if the fund size eventually were to increase by $500 million and the single-line rate did not change, the charges for these services per month would be much greater – Tier 1 would be $9.83, Tier 2 would be $49.15, and Tier 3 $393.20. If it increased by $1 billion, the multi-line business connection per month charges would jump approximately 37% from the initial per-connection assessment, to $11.35 for Tier 1, $56.75 for Tier 2, and $454.00 for Tier 3.[19] Regardless of whatever formula the Commission establishes for initial assessments, rates for these multi-line business services would fluctuate widely, rather than remaining "specific, predictable, and sufficient." 47 U.S.C. § 254(d).

In addition, as USAC has previously noted, "[m]oving from a revenue-based universal service contribution scheme to one based on a flat end-user charge would create significant administrative hurdles." USAC Comments, June 25, 2001, at 16; *see also* USAC Reply, July 9, 2001, at 13. The per-connection proposal would impose significant, ongoing administrative burdens on both USAC and carriers that are not associated with the current revenue-based system. Carriers track revenues in the normal course of business; they do not currently track "connections," as the NPRM is proposing to define the term. Carriers would have to create a method for counting and reporting activated telephone numbers. Reporting companies would need to develop new systems to count "connections" in accordance with the Commission's new definitions. They also would need to hire and train new employees to operate and maintain such systems, and to collect and maintain archives of "connection" records in order to comply with

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[19] This significantly disparate treatment of multi-line customers threatens the Act's directive that different customers not receive "unjust or unreasonable discrimination in charges." 47 U.S.C. § 202.

USAC requests for verification audits. Because companies will still need to collect and report revenues for other business purposes, as well as for other programs (*e.g.*, TRS) that use this information, the per-connection process would be *in addition to* (rather than replacing) the current revenue-based data gathering and reporting processes.

The issue of how to count connections becomes even more complicated when more sophisticated "connections" are considered. For example, if multi-line business connections are treated on equivalency ratios, carriers will have to create additional methods of counting bandwidth capacity. And the per-connection count would be particularly troublesome when it comes to special access circuits, which typically connect an end user to an IXC POP. Under the Commission's proposal, only the channel termination to the "end user" location would be counted as the "connection," not the connection to the IXC POP. NPRM ¶ 41.[20] Because many special access circuits connect multiple end user locations with an IXC POP, and Verizon's billing systems do not differentiate between the different types of channel terminations, Verizon would have significant difficulty in separately identifying the "end user" connections from the connections to the IXC POPs. For the simplest circuit, Verizon bills for a channel termination to the end user, channel mileage to the serving wire center, and another channel termination to the IXC POP. Due to Commission rules that require ILECs to bill the same rate for all of these connections, Verizon's billing system does not distinguish between channel terminations to the end user and those to the IXC POP. The only way for Verizon to identify the connections would be to conduct a physical review of the engineering records for each customer for all special

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[20] Under the Commission's proposal, "end users" would not include "entities that purchase and resell telecommunications or telecommunications services to other customers." NPRM ¶ 41.

access circuits. Given the millions of special access circuits, this would require a major work effort just to establish the initial base – let alone maintain an accurate inventory on a going forward basis.

In addition, there is the logistical matter of when and how connections would be counted, as they vary widely from day to day. Verizon makes thousands of connections and disconnections every month. How would connections that terminate in the middle of the month be counted? Currently, Verizon staggers its billing cycles, so different customers are billed at different times of the month.[21] Under the proposed per-connection method, would a customer be required to pay the entire $1 if the "connection" was in place for any portion of the month? Or would the Commission treat the terminated connection as a fraction of a "connection," so that, if the customer had the connection for half a month, it would be treated as half a connection, and assessed at $.50?[22] The latter would be simpler to administer, but begins to look less like a per-connection charge and more like a revenue-based system. If connections are instead counted as of a date certain during the month, there would be difficulties with billing, especially with carriers (such as Verizon) who stagger billing dates. In addition, Verizon would have to change its systems to track all customers' connections as of a date certain, which is not information it currently collects.

As the Commission has recognized, the per-connection proposal also does not address the contributions of carriers and services that do not involve standard "connections," such as dial-

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[21] Due to the enormous volume of billing statements required, it would be impossible for Verizon to bill all customers on the same day under current systems.

[22] Currently, if service is activated or discontinued during the month, a Verizon customer pays for standard charges on a pro-rated basis, based on the portion of the month the customer had service.

around services, prepaid calling cards, and other long distance services. *See* NPRM ¶ 68. The Commission would either have to develop allocators in order to make separate assessments of these services, or would essentially mandate that a smaller pool of carriers (LECs and wireless providers) carry what may be an increasingly large universal service fund burden.

In addition, mandating a "per-connection" charge inhibits pricing flexibility, which also will limit carriers' options to market and bundle packages in new and competitive ways. For example, wireless providers often have a shared minute plan, where family members can each have an activated telephone and a separate phone number, but only one bill (and one set of minutes) is used. It is unclear how a "per-connection" charge would apply under such a shared plan. If it is per activated handset (as is proposed, *see* NPRM ¶ 35), then what had once been an affordable plan for keeping in touch with family members may become less attractive. Indeed, the Commission originally rejected a mandatory end-user surcharge for fear that it might "affect contributors' flexibility to offer, for example, bundled services or new pricing options, possibly resulting in fewer options for consumers." NPRM ¶ 23. In an industry where new products and services are emerging constantly, the Commission should not adopt a mandatory per-connection proposal that would cut down on carriers' flexibility in marketing and packaging these products and services.

B. The Per-Connection Proposal Would Unfairly Shift Disproportionate Burdens to Certain Carriers and Classes of Customers, and as Proposed Is Invalid Under the Act

There should be little wonder as to why the "per-connection" proposal is being so strongly lobbied by the long distance carriers. Under the long distance carriers' per-connection proposal, they will shift from being the majority contributors to contributing *almost nothing.* As the Commission itself recognizes, the proposed shift to a per-connection system would radically change the impact on contributors. Under the current system, the Commission estimates that IXCs are responsible for 63% of contributions, LECs for 23%, and mobile wireless providers 14%. NPRM ¶ 59. Under the connection based proposal, wireless providers would be responsible for 24% (a more than 70% increase), while "fixed service providers" would be responsible for 76%. *Id.* While the Commission states that the "fixed service providers" will include IXCs "to the extent that they provide end-user connections," the practical matter is that most of long distance carriers' revenues are *not* based on "end-user connections," so the bulk of this 76% contribution will come from LECs. *Id.*[23] Thus, the proposal could roughly *triple* the LECs' contributions in order to allow IXCs to minimize their universal service contributions.[24]

Under current conditions, the per-connection proposal is invalid under the Act. As an initial matter, shifting the bulk of charges to LECs and wireless providers, while allowing IXCs to escape contribution almost entirely, would violate the Act's directive – that "*[e]very* telecommunications carrier that provides interstate telecommunications services shall contribute, on an *equitable* and *nondiscriminatory* basis" to the universal service fund. *See* 47 U.S.C. § 254(d) (emphasis added). In addition, there is the problem that the proposed per-connection charge shifts the contribution burden from carriers whose revenues are predominantly interstate to rest almost entirely on those whose revenues are predominantly intrastate. This has the

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[23] Indeed, the Commission has recognized that a connection-based assessment approach "would represent a significant shifting of contribution obligations away from interexchange carriers to local exchange carriers and mobile service providers." NPRM ¶ 59.

[24] That is undoubtedly why the IXC Coalition's per-connection proposal, while very explicit on figuring out ways that contributions from LECs, wireless providers, and providers of pagers could be doubled or tripled, was silent on how the fund would recover contributions from IXCs. *See* December 21, 2001, Letter from Patrick H. Merrick, Esq., AT&T, to Magalie Roman Sales, attachment at 5, 9, 11 (proposing to increase other contributors' charges, currently ranging from $.35 to $.53, to $1.00 per-connection for residential users, with no mention of any IXC contribution).

appearances of an attempted end-run around the Fifth Circuit's ruling that universal service must be based on interstate dollars.[25]

III. Sprint's Proposal Is Better Than a Per-Connection Charge, But Still Is Not Preferable to a Straight Revenue-Based System

Sprint's proposal is preferable to the IXC per-connection charge in that it does not eliminate IXCs entirely from contributing to universal service. However, its three-tier system is not better (and in some ways is much worse) than the revised revenue-based system outlined above.

As an initial matter, one of the major suggestions from the Sprint proposal – the collect and remit procedure – is one that can be implemented in the current revenue-based framework. *See* Sprint Comments, p. 10; section I, *supra*. And the other main portion of the proposal – that the Commission develop "interstate allocators" for each industry segment may solve problems on an industry-wide level, but would magnify some of the revenue mismatch problems inherent in the current system. That is, carriers with low or declining interstate revenues would be forced to pay contributions greater than their share of actual interstate revenues. The Sprint proposal thus would put carriers with lower percentages of interstate revenues than other carriers in the same class at a competitive disadvantage, because they would have to increase their per-customer charges in order to recover the same universal fund assessment that other carriers recover from a larger customer base.

In addition, it is unclear how such a proposal would affect carriers' ability to enter into other areas. For example, if IXCs are forced to pay into the fund as if 74% of their revenues are

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25 *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. denied*, 530 U.S. 120 (2000).

interstate, they may be discouraged from engaging in areas that would result in non-interstate revenues, because those revenues will be subject to the universal service charges (at a 74% rate), but there is no method for recovering these charges from the users of those services. Similarly, it is unclear how bundled services would be treated under Sprint's proposal.

IV. The Commission Should Not Impose Requirements That Would Increase Administrative Burdens, or That Would Treat Carriers Differently

The Commission should not require carriers to report connections on a monthly basis. NPRM ¶ 78. If carriers would be required to gather and report data (whether regarding revenues or "connections") on a monthly basis, rather than the current system of filing quarterly revenue reports, this would add enormous administrative costs to the carriers.

The Commission also asked "whether it might be appropriate to adopt recovery limitations for carriers that are dominant under our rules, while providing non-dominant carriers with continued flexibility in contribution recovery practices." NPRM ¶ 100. The Commission has stated no reason why it would be necessary to treat "dominant" carriers differently from other carriers for universal service contribution, and it is questionable whether such disparate treatment would pass muster under the Act's directive that "[e]very telecommunications carrier" be required to contribute "on an equitable and nondiscriminatory basis." 47 U.S.C. § 254(d).

V. The Commission Should Require All Broadband Providers to Contribute to the Schools and Libraries Fund, and Only That Portion of the Universal Service Fund

In a companion proceeding, the Commission is seeking comment on whether facilities-based broadband Internet access providers should be required to contribute to support universal service. *See* NPRM ¶ 4.[26] The Commission should require *all* broadband service providers to contribute to the schools and libraries fund on an equal basis, and to contribute *only* to the schools and libraries fund. This would alleviate the concern of decreasing interstate revenues by increasing the number of contributors to the schools and libraries universal service fund.

Currently, only DSL providers must contribute to the universal service fund based on broadband revenues.[27] This is despite the fact that all providers of broadband – DSL, cable modem, fixed wireless, and satellite – are eligible to provide services to schools and libraries, subsidized by the schools and libraries fund.[28] The providers of all of these services are providing the same services, and competing for the same customers. Thus, they should be treated the same for regulatory purposes, in keeping with the Act's directive that the Commission shall establish "competitively neutral rules" to enhance schools and libraries' access to advanced services. 47 U.S.C. § 254(h)(2)(A). Thus, if DSL providers are required to contribute to universal service, all providers of similar services should be required to contribute on an equal basis. Requiring all other broadband providers to contribute amounts equal to that being contributed by DSL providers would be a step toward making the Commission's regulations "competitively neutral."

Requiring broadband providers to contribute *only* to the schools and libraries fund (and exempting broadband revenues from contribution to the remaining portion of the universal

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26 *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, Notice of Proposed Rulemaking, FCC 02-42 (rel. Feb. 15, 2002) ("Broadband NPRM").

27 Broadband NPRM ¶¶ 65-79.

28 *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, Declaratory Ruling and NPRM, FCC 02-77, ¶ 6 (rel. Mar. 15, 2002).

service fund) would be preferable to the current system, because it would require broadband providers to contribute only to the portion of the federal program that is being used to subsidize the purchase of advanced services. *See* 47 U.S.C. § 254(h)(2). Verizon will file comments in the Broadband NPRM proceeding to address this proposal in more detail.

Conclusion

The Commission should maintain the revenue-based assessment system, with small adjustments (such as making a collect and remit system, and moving to contributions based on current revenues), rather than making a wholesale shift to another method that is untested, would likely cause more problems than it would fix, and, as proposed under current conditions, would violate the Act.

Respectfully submitted,

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Verizon telephone companies

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Attachment A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.